

<p style="text-align: right;">Page 85</p> <p>1 Q Who told you that the boat was rolling?</p> <p>2 A In the statements of all the people that were</p> <p>3 deposited and Mr. Aguiar's own statement.</p> <p>4 Q What was the sea condition on that day?</p> <p>5 A They were described as relatively calm.</p> <p>6 Q Do you remember what specifically?</p> <p>7 A Specifically I don't remember what the sea state</p> <p>8 exactly was, but it was relatively calm, not rough.</p> <p>9 Q Who told you that the boat rolled right before his</p> <p>10 accident?</p> <p>11 A That's Mr. Aguiar's own statement and the</p> <p>12 depositions of specifically Mr. Lima.</p> <p>13 Q And Mr. Lima, it's your testimony in his deposition</p> <p>14 Mr. Lima said that the boat rolled right before his</p> <p>15 accident?</p> <p>16 A Boat rolled, dipped, moved in the seaway.</p> <p>17 Q Right before the accident?</p> <p>18 A At the time of the accident, yes.</p> <p>19 Q Is it your understanding that the door struck</p> <p>20 Mr. Aguiar?</p> <p>21 A No.</p> <p>22 Q Is it your understanding that his hand was crushed</p> <p>23 between the door and some other object?</p> <p>24 A My understanding is that the hook, moving hook on</p>	<p style="text-align: right;">Page 87</p> <p>1 A There is a chain on the door that the pelican hook</p> <p>2 goes around to secure the door to the gallus frame</p> <p>3 using the chain and the pelican hook as the securing</p> <p>4 mechanism.</p> <p>5 Q Is it your understanding that the door dropped down</p> <p>6 toward the water moving relative to the gallus frame</p> <p>7 at the time of Mr. Aguiar's accident?</p> <p>8 A I don't understand the question.</p> <p>9 Q You understand what relative movement is, correct?</p> <p>10 A Yes.</p> <p>11 Q There is absolute movement and relative movement,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q So we can define the terms, in terms of absolute</p> <p>15 movement we are all moving all the time because we</p> <p>16 are on the earth and spinning around, right?</p> <p>17 A If -- You mean as we sit here still?</p> <p>18 Q As we sit here now we are all moving?</p> <p>19 A All moving this space, right.</p> <p>20 Q You and I are moving through space at the same speed</p> <p>21 and in the same direction, correct?</p> <p>22 A We hope so. Sometimes we are in the opposite</p> <p>23 direction and speed, but --</p> <p>24 Q At least physically you and I are moving through</p>
<p style="text-align: right;">Page 86</p> <p>1 the pelican hook snapped open because the chain got</p> <p>2 taught, and the hook struck him in the finger.</p> <p>3 Q Where --</p> <p>4 A That is the best of his recollection as to what</p> <p>5 happened.</p> <p>6 Q What was your understanding of the rigging -- You</p> <p>7 mentioned a safety wire?</p> <p>8 A Safety chain.</p> <p>9 Q The MY WAY was equipped with a safety chain,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q And the safety chain when it was not hooked up had a</p> <p>13 chain, fairly long chain, okay, hanging on the</p> <p>14 gallus frame, correct?</p> <p>15 A Yes.</p> <p>16 Q And there was another shorter section of chain</p> <p>17 hanging on the gallus frame at the end of which was</p> <p>18 a pelican hook. Is that your understanding?</p> <p>19 A The chain is attached, pelican hook is attached to</p> <p>20 the chain that is attached to the gallus frame.</p> <p>21 Q And in addition there is a section of chain hanging</p> <p>22 from the gallus frame as well that you then snake</p> <p>23 through the door and attach to the pelican hook,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 88</p> <p>1 space at the same speed and the same direction --</p> <p>2 A Right.</p> <p>3 Q -- as we sit here across the table?</p> <p>4 A As long as we are sitting here across the table.</p> <p>5 Q There is no relative movement between us?</p> <p>6 A Correct.</p> <p>7 Q We are still staying in the same relative position</p> <p>8 to each other, correct?</p> <p>9 A Correct.</p> <p>10 Q With respect to the FISHING VESSEL MY WAY, the</p> <p>11 FISHING VESSEL MY WAY is always going to move</p> <p>12 because it's A, spinning around the earth and B,</p> <p>13 because it's moving up and down in the seaway, true?</p> <p>14 A I think for the purposes of what we're talking about</p> <p>15 we can disregard the spinning around the earth.</p> <p>16 Q And you would agree with me that the entire vessel</p> <p>17 whenever it's on the ocean, the vessel is going to</p> <p>18 be moving?</p> <p>19 A The vessel had numerous different movements on the</p> <p>20 seaway.</p> <p>21 Q Pitching which is bow to stern, correct?</p> <p>22 A Yes.</p> <p>23 Q Rolling which is port to starboard?</p> <p>24 A Yes.</p>

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<p style="text-align: right;">Page 89</p> <p>1 Q There is short-term movements like rolling, correct?</p> <p>2 A It's yaw, Y A W.</p> <p>3 Q That would be twisting?</p> <p>4 A It's a side-to-side movement of the bow and stern</p> <p>5 relative to a fixed point in a distance. It's the</p> <p>6 side-to-side movement on a horizontal plane, and</p> <p>7 there is rolling around a longitudinal axis and</p> <p>8 pitching around a horizontal axis and a combination</p> <p>9 of all of those movements together creating a</p> <p>10 constant moving platform in many directions.</p> <p>11 Q You would agree with me as to objects on the boat,</p> <p>12 that those objects -- The boat can be moving -- With</p> <p>13 respect to some objects on the boat there may be no</p> <p>14 relative movement as to those two objects?</p> <p>15 A Well, if they are fixed to the vessel and they are</p> <p>16 moving with the main vessel platform, then they have</p> <p>17 the same relative motion with the seaway as the hull</p> <p>18 would have. The engine is fixed to the vessel and</p> <p>19 is moving and has the same movement as the hull has.</p> <p>20 Q Right. So that if the engine is seated properly or</p> <p>21 bedded properly, there shouldn't be any movement</p> <p>22 relative to the vessel?</p> <p>23 A No, but the liquid inside the engine will move the</p> <p>24 oil, the liquid inside the tanks move.</p>	<p style="text-align: right;">Page 91</p> <p>1 water and gave that relative motion condition.</p> <p>2 Q The door moved relative to the water?</p> <p>3 A The door is suspended.</p> <p>4 Q Hanging on the gallus frame?</p> <p>5 A Yes, so that becomes a pendulum, and the pendulum</p> <p>6 will swing with the movement of the boat trying to</p> <p>7 seek equilibrium and it can't seek equilibrium as</p> <p>8 long as it's moving in space until it's fixed as</p> <p>9 part of the boat.</p> <p>10 Q What you are saying is if the boat, to use the port</p> <p>11 side, if the boat rolls to port, the door will swing</p> <p>12 slightly outboard?</p> <p>13 A Swing slightly outboard.</p> <p>14 Q If the boat rolls to starboard, the boat will swing</p> <p>15 slightly inboard?</p> <p>16 A It will come back in toward the vessel.</p> <p>17 Q And the point at which the door will pivot is the</p> <p>18 point at which the hanging block attaches to the</p> <p>19 gallus frame, correct?</p> <p>20 A Yes. And it's determined on the length between the</p> <p>21 pivot point and whether or not the pivot point</p> <p>22 itself moves, which on a boat it will. That pivot</p> <p>23 point is not fixed because the pivot point, in this</p> <p>24 case the arm of the gallus frame, is also moving</p>
<p style="text-align: right;">Page 90</p> <p>1 Q Relative to the vessel?</p> <p>2 A Relative to the vessel. Everything is trying to</p> <p>3 seek a horizontal level so the liquids would slosh</p> <p>4 back and forth like holding a dishpan and trying to</p> <p>5 carry it level. The oil in the engine will move. A</p> <p>6 person walking on deck will move but not realize</p> <p>7 that they are moving.</p> <p>8 Q If you are standing on the starboard side, for</p> <p>9 example, and the boat rolls to starboard, your body</p> <p>10 will drop down, the railing will drop down, the deck</p> <p>11 will drop down and you may not notice that you are</p> <p>12 actually falling?</p> <p>13 A You may not fall, you will maintain equilibrium</p> <p>14 using the sea legs that you develop in order to</p> <p>15 maintain an upright position. Otherwise, you will</p> <p>16 fall over if you can't maintain that vertical</p> <p>17 position. You, gravity will take you over and you</p> <p>18 will fall down.</p> <p>19 Q Is it your understanding at the time of Mr. Aguiar's</p> <p>20 accident the door moved relative to the gallus</p> <p>21 frame?</p> <p>22 A It's my understanding that the door moved relative</p> <p>23 to something. It's my opinion that the door moved</p> <p>24 relative to the side of the boat down toward the</p>	<p style="text-align: right;">Page 92</p> <p>1 relative to the sea lane. As it rolls, that in</p> <p>2 itself is a fixed object moving through space.</p> <p>3 Q Correct. But we are just talking about relative</p> <p>4 movement, the relative movement of the door as</p> <p>5 compared to the boat, forgetting for the moment</p> <p>6 absolute movement. With respect to relative</p> <p>7 movement, as the boat rolls to port, the port side</p> <p>8 door will have a tendency to swing outboard</p> <p>9 slightly?</p> <p>10 A Outboard and down.</p> <p>11 Q And down relative to the -- If you were standing on</p> <p>12 the boat, you wouldn't perceive any downward</p> <p>13 movement of the door?</p> <p>14 A Yes, you would.</p> <p>15 Q How?</p> <p>16 A Because the port side of the pivot points move</p> <p>17 closer to the water. So when it's at its maximum</p> <p>18 vertical point, it's at a maximum. The distance of</p> <p>19 the fixed object hanging from that pivot point is at</p> <p>20 a certain distance off from the, let's say the sea,</p> <p>21 the ocean. When the boat rolls to port, that fixed</p> <p>22 object on the pendulum swings outboard but it's</p> <p>23 moving in a radius closer to the seaway.</p> <p>24 Q But you would agree with me if you are floating in</p>

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<p style="text-align: right;">Page 93</p> <p>1 the water, it would appear like the door is coming 2 toward you, correct? 3 A If you were floating in the water off the side of 4 the boat? 5 Q Off the port side of the boat. The door would 6 appear like it would be dropping down toward you? 7 A Yes. 8 Q If you are standing in the boat -- 9 A In other words if I was in a small boat on the side 10 of the MY WAY or any other boat and all of a sudden 11 the boat off of me rolled down, that object would 12 get closer to me and appear as if it was coming 13 down, yes. It is coming down relative to the fixed 14 point on the boat I was, platform I was on. 15 Q Correct. If you are on the boat, the height above 16 the deck of the, the height above the deck of the 17 door would remain constant or more or less constant 18 other than the angle of change? 19 A Relative to the deck I was standing on like 20 Mr. Aguiar, you mean? 21 Q Yes. 22 A No. 23 Q Why not? 24 A Because that object is swinging down toward the</p>	<p style="text-align: right;">Page 95</p> <p>1 A Can I review the documents? 2 Q Yes. 3 A "Was the boat rolling at the time that Carlos was 4 hooking up the door?" 5 "It always is, yes. The minute you 6 leaves New Bedford to come back, it never stops." 7 MR. REGAN: For the record he is 8 referring to Mr. Lima's deposition at page forty. 9 Q Do you know if the boat was rolling to port or 10 starboard? 11 A It rolls both directions. 12 Q If it rolled to starboard, it would appear, is your 13 testimony when it rolls to starboard, it appears as 14 if the door is lifting up? 15 A If the boat had been rolling to starboard, the door 16 which is the suspended weight would have come in 17 toward him and the chain on which he was holding 18 onto would become slacker because the distance 19 between what he was trying to do and where he was 20 would have been reduced. Instead of the chain 21 coming taught, the chain would become slack. 22 Q Where is the chain attached to on the gallus 23 attachment point? 24 A Somewhere around head height of the gallus.</p>
<p style="text-align: right;">Page 94</p> <p>1 water and it's falling away and going to be, he is 2 going to be reaching down more for it. 3 Q But his feet are falling down toward the water as 4 well every time the boat rolls to port, correct? 5 A Right. To try to describe the differences and the 6 distances would be a huge mathematical complex 7 formula, but I can assure you if you are standing on 8 the deck of a boat and working on an object that is 9 hanging over the side of the boat and that boat 10 rolls in that direction, you are going to be 11 reaching further out and further down to try to hold 12 onto it. 13 Q Further down relative to what? Relative to the deck 14 below your feet or relative -- 15 A Relative to where you started on a horizontal plane 16 it's moving down slightly. 17 Q Where did you read that the boat was rolling at that 18 time of his accident? 19 A It was in numerous depositions that the boat was 20 rolling slightly, and in his own statements and 21 depositions and Mr. Lima's. That is what boats do, 22 they roll. 23 Q Did anyone ever say that the boat was rolling at the 24 time of the accident?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q Where is the block attached? 2 A Higher up. 3 Q How much higher? 4 A Several feet, a few feet. 5 Q You would agree with me if the chain or the safety 6 chain is hung at the same point as the block, then 7 if they have the same point which I understand it's 8 an impossibility -- 9 A It isn't, it's not at the same point. 10 Q Correct. If they were, there would be no relative 11 movement whatsoever no matter how much the boat 12 rolled? 13 A The chain would still get taught. The distance away 14 from where he was standing with his hands trying to 15 do the work that he was trying to do would have 16 changed, would have altered so it would have become 17 tension in the mechanism because it was moving away 18 from the side of the boat where he was standing. 19 Q Is it your testimony that there is always movement 20 on the boat? 21 A There is always movement on a boat at sea, yes. 22 Q Is it your testimony that since there is always 23 movement on the boat at sea, that the safety chain 24 always gets taught?</p>

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